

Right-of-Way Procedures for Local Public Agency Projects Part I

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[Editor's Note — The above title is discussed in three parts — Part II and Part III follow as the next two papers. The papers are addressed to Local Public Agency officials and other county road officials. Part I is introductory.]

The new FHWA regulations concerning R/W acquisition were effective July 3, 1985. Hopefully, you or someone from your organization attended one of the seven seminars which we presented regarding R/W acquisition on local federal-aid projects. New manuals were sent to each LPA and consultant on the Division of Local Assistance mailing list as well as the list maintained in our office of approved appraisers, buyers, relocation agents and consulting firms. These manuals were written in a very simple manner and are meant to be used. We have seen a marked improvement in the R/W documents submitted for R/W certification which indicates that most of you have consulted the manual and are attempting to comply with these regulations.

However, there is some flexibility in the regulations, depending on specific situations, so I urge you to contact either Carol Lewis or myself for guidance in those instances. Don't let a small problem with an acquisition of a parcel or parcels delay your project. Let us help you solve it and get the R/W cleared!

Acquisition of R/W on projects which were started before July 3, 1985 were allowed to be acquired following the old regulations. We believe most of those projects have now been certified and let by now so it's time to know, understand, and follow the new regulations. They weren't intended to complicate the process or to add costs. We do see, however, re-occurring misunderstandings or complications which we'd like to bring to your attention today.

Two areas which have presented problems recently are the appraisal of temporary R/W and appraisals involving acquisition by R/W grants or permanent easements. Basically, appraisals for temporary R/W must cover the time from the acquisition date until construction is complete. Three years is the norm unless the LPA can ascertain that the project

will be completed in less time. Other than the difference in appraising, temporary R/W is treated the same as permanent R/W.

Another re-occurring situation has been the acquisition of R/W by Right-of-Way Grant rather than fee title by Warranty Deed. It needs to be understood that acquisition by grant is an easement. The property owner retains fee title to the property with the LPA acquiring the right to use the area conveyed. Appraisals must be adequate for the property owners loss in rights. The state has made it a practice to pay at least 95% of the fair market value for this type acquisition and FHWA concurs with this practice. Parcels appraised for less than 95% of value will be returned for re-evaluation.

The pass-outs cover both of these subjects which we encourage you to insert in your procedure manual for future use.

My assistant, Carol Lewis, has the responsibility to review the R/W acquisition documents which are submitted for every project and see that the R/W certification reaches FHWA in time for the construction letting for the project.

Probably the most technical portion of R/W is R/W engineering. Recently, we have seen some significant project delays due to R/W engineering deficiencies.